

SENATE AMENDMENTS TO SENATE BILL 425

By COMMITTEE ON JUDICIARY

April 12

- 1 In line 2 of the printed bill, after “ORS” insert “137.707 and”.
- 2 In line 6, delete the second “or”.
- 3 In line 7, delete the second “or”.
- 4 After line 7, insert:
- 5 “(c) Aids or facilitates the commission of prostitution by a person under 18 years of age; or”.
- 6 In line 8, delete “(c)” and insert “(d)”.
- 7 In line 10, after “(1)(b)” insert “or (c)”.
- 8 Delete lines 14 through 18 and insert:
- 9 **“SECTION 2.** ORS 137.707 is amended to read:
- 10 “137.707. (1)(a) Notwithstanding any other provision of law, when a person charged with aggra-
- 11 vated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is
- 12 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or
- 13 after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this sec-
- 14 tion is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed
- 15 on or after October 4, 1997, or when a person charged with the offense described in subsection (4)(c)
- 16 of this section is 15, 16 or 17 years of age at the time the offense is committed and the offense is
- 17 committed on or after January 1, 2008, the person shall be prosecuted as an adult in criminal court.
- 18 “(b) A district attorney, the Attorney General or a juvenile department counselor may not file
- 19 in juvenile court a petition alleging that a person has committed an act that, if committed by an
- 20 adult, would constitute aggravated murder or an offense listed in subsection (4) of this section if the
- 21 person was 15, 16 or 17 years of age at the time the act was committed.
- 22 “(2) When a person charged under this section is convicted of an offense listed in subsection (4)
- 23 of this section, the court shall impose at least the presumptive term of imprisonment provided for
- 24 the offense in subsection (4) of this section. The court may impose a greater presumptive term if
- 25 otherwise permitted by law, but may not impose a lesser term. The person is not, during the service
- 26 of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary
- 27 leave from custody. The person is not eligible for any reduction in, or based on, the minimum sen-
- 28 tence for any reason under ORS 421.121 or any other provision of law. ORS 138.012, 163.105 and
- 29 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated
- 30 murder under ORS 163.095 except that a person who was under 18 years of age at the time the of-
- 31 fense was committed is not subject to a sentence of death.
- 32 “(3) The court shall commit the person to the legal and physical custody of the Department of
- 33 Corrections.
- 34 “(4) The offenses to which this section applies and the presumptive sentences are:
- 35 “
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2	(a)(A) Murder, as defined in
3	ORS 163.115.....300 months
4	(B) Attempt or conspiracy
5	to commit aggravated
6	murder, as defined
7	in ORS 163.095.....120 months
8	(C) Attempt or conspiracy
9	to commit murder, as
10	defined in ORS 163.11590 months
11	(D) Manslaughter in the
12	first degree, as defined
13	in ORS 163.118.....120 months
14	(E) Manslaughter in the
15	second degree, as defined
16	in ORS 163.125.....75 months
17	(F) Assault in the first
18	degree, as defined
19	in ORS 163.185.....90 months
20	(G) Assault in the second
21	degree, as defined
22	in ORS 163.175.....70 months
23	(H) Kidnapping in the first
24	degree, as defined in
25	ORS 163.235.....90 months
26	(I) Kidnapping in the second
27	degree, as defined in
28	ORS 163.225.....70 months
29	(J) Rape in the first degree,
30	as defined in ORS 163.375.....100 months
31	(K) Rape in the second
32	degree, as defined in
33	ORS 163.365.....75 months
34	(L) Sodomy in the first
35	degree, as defined in
36	ORS 163.405.....100 months
37	(M) Sodomy in the second
38	degree, as defined in
39	ORS 163.395.....75 months
40	(N) Unlawful sexual
41	penetration in the first
42	degree, as defined
43	in ORS 163.411.....100 months
44	(O) Unlawful sexual
45	penetration in the

1 second degree, as
2 defined in ORS 163.40875 months
3 (P) Sexual abuse in the first
4 degree, as defined in
5 ORS 163.42775 months
6 (Q) Robbery in the first
7 degree, as defined in
8 ORS 164.41590 months
9 (R) Robbery in the second
10 degree, as defined in
11 ORS 164.40570 months
12 (b)(A) Arson in the first degree,
13 as defined in
14 ORS 164.325, when
15 the offense represented
16 a threat of serious
17 physical injury.90 months
18 (B) Using a child in a display
19 of sexually explicit
20 conduct, as defined in
21 ORS 163.67070 months
22 (C) Compelling prostitution,
23 as defined in ORS 167.017
24 **(1)(a), (b) or (d)**70 months
25 (c) Aggravated vehicular
26 homicide, as defined in
27 ORS 163.149240 months

28 “ _____

29
30 “(5) If a person charged with an offense under this section is found guilty of a lesser included
31 offense and the lesser included offense is:

32 “(a) An offense listed in subsection (4) of this section, the court shall sentence the person as
33 provided in subsection (2) of this section.

34 “(b) Not an offense listed in subsection (4) of this section:

35 “(A) But constitutes an offense for which waiver is authorized under ORS 419C.349, the court,
36 upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction
37 or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdic-
38 tion, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdic-
39 tion, the court shall sentence the person as an adult under sentencing guidelines. If the court does
40 not retain jurisdiction, the court shall:

41 “(i) Order that a presentence report be prepared;

42 “(ii) Set forth in a memorandum any observations and recommendations that the court deems
43 appropriate; and

44 “(iii) Enter an order transferring the case to the juvenile court for disposition under ORS
45 419C.067 and 419C.411.

1 “(B) And is not an offense for which waiver is authorized under ORS 419C.349, the court may
2 not sentence the person. The court shall:

3 “(i) Order that a presentence report be prepared;

4 “(ii) Set forth in a memorandum any observations and recommendations that the court deems
5 appropriate; and

6 “(iii) Enter an order transferring the case to the juvenile court for disposition under ORS
7 419C.067 and 419C.411.

8 “(6) When a person is charged under this section, other offenses based on the same act or
9 transaction shall be charged as separate counts in the same accusatory instrument and consolidated
10 for trial, whether or not the other offenses are aggravated murder or offenses listed in subsection
11 (4) of this section. If it appears, upon motion, that the state or the person charged is prejudiced by
12 the joinder and consolidation of offenses, the court may order an election or separate trials of
13 counts or provide whatever other relief justice requires.

14 “(7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty
15 of aggravated murder or an offense listed in subsection (4) of this section and one or more other
16 offenses, the court shall impose the sentence for aggravated murder or the offense listed in sub-
17 section (4) of this section as provided in subsection (2) of this section and shall impose sentences for
18 the other offenses as otherwise provided by law.

19 “(b) If a person charged and tried as provided in subsection (6) of this section is not found guilty
20 of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one
21 of the other charges that constitutes an offense for which waiver is authorized under ORS 419C.349,
22 the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain
23 jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain
24 jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains
25 jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court
26 does not retain jurisdiction, the court shall:

27 “(A) Order that a presentence report be prepared;

28 “(B) Set forth in a memorandum any observations and recommendations that the court deems
29 appropriate; and

30 “(C) Enter an order transferring the case to the juvenile court for disposition under ORS
31 419C.067 and 419C.411.

32 “**SECTION 3. The amendments to ORS 137.707 and 167.017 by sections 1 and 2 of this 2011
33 Act apply to conduct occurring on or after the effective date of this 2011 Act.**

34 “**SECTION 4. This 2011 Act being necessary for the immediate preservation of the public
35 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect
36 on its passage.**”

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